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10/765,006	01/26/2004	Richard L. Thibault	102314-0160	6758

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EXAMINER

VU, THONG H

ART UNIT	PAPER NUMBER
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2619

NOTIFICATION DATE	DELIVERY MODE
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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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<p align="center">Office Action Summary</p>	Application No. 10/765,006	Applicant(s) THIBAUT ET AL.	
	Examiner Thong H. Vu	Art Unit 2619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 178-276 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 178-276 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/07</u> | 6) <input type="checkbox"/> Other: _____ |

1. Claims 178-276 are pending.
2. This application is a CON of USP 6,799,195 which is a CON of 08/700,199 (ABN).

Response to Arguments

3. Applicant's arguments, see pages 18-30, filed 1/17/08, with respect to the rejection(s) of claim(s) 178-276 under Theimer have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Sharpe.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 178-276 are rejected on the ground of nonstatutory double patenting over claims 1-21 of U. S. Patent No. 6,799,195 B1 ('195) since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

('195) 1. A system for process control, comprising

A. a network,

B. a server digital data processor coupled to the network and to a process control apparatus, the server digital data processor including a command processor for transferring information between the network and the process control apparatus, said process control apparatus comprising control/sensing devices to monitor and/or control a process, the command processor providing services for access to information regarding the process control apparatus, those services including at least one of

(i) creating a named object that stores information regarding the process control apparatus,

(ii) destroying such an object,

(iii) accessing information in such an object, (iv) updating information in such an object,

(v) determining, from an object name, a physical address associated with such an object, and

(vi) providing notification of changes in at least selected information stored in such an object,

C. a client digital data processor coupled to the network, the client digital data processor comprising an information client for establishing communications with the server digital data processor over the network, generating and transmitting to the server digital data processor a request for an applet, receiving an applet from the server, and defining a virtual machine environment for execution thereof,

D. the client digital data processor executing the applet within the virtual machine environment, the applet configuring the client digital data processor as a process controller for establishing communications over the network with the command processor and for at least one of monitoring and controlling the process control apparatus via those communications, the process controller generating, and transmitting, over the network, requests for services provided by the command processor in order to at least one of monitor the process control apparatus and control the process control apparatus.

(application) 199. A process control system comprising

A. a plurality of devices to any of monitor and control a process,

B. a portable computer equipped for display to, and input from, an operator,

C. a digital data processor coupled to the portable computer via a wireless network,

D. software executing on the digital data processor, the software responding to selected requests received from the portable to execute a service for at least one of

(i) creating a named object that stores information regarding the one or more control/sensing devices,

(ii) destroying such an object,

(iii) accessing information in such an object,

(iv) updating information in such an object,

(v) determining, from an object name, a physical address associated with such an object, and

(vi) providing notification of changes in at least selected information stored in such an object, and

E. the portable computer transmitting to the digital data processor requests for one or more said services, and responding to input to transit to the digital data processor requests for one or more of said services in order to update information in an object that is associated with one or more of the devices

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See MPEP § 804.

Claim Rejections - 35 USC § 102

Claims 178-276 are rejected under 35 U.S.C. 102(e) as being anticipated by Sharpe, Jr. et al [Sharpe 5,903,455].

5. As per claim 257, Sharpe discloses A method of operating a digital data processor for use in a control system that includes one or more control/sensing devices to monitor and/or control a process, said digital data processor (i.e.: a server) including a wireless network connection [Sharpe, the control and monitors a device, col 7 lines 28-40; a server 66, col 8 lines 6-16; a hand-held device or laptop, col 6 lines 30-45], the method comprising

A. configuring the digital data processor as a process controller for purposes of controlling one or more of said control/sensing devices [Sharpe, change the configured of one or more of the smart devices, col 7 lines 28-40], and

B. exchanging (i.e.: request/response) one or more messages over said wireless network via said wireless network connection for purposes of effecting said controlling of said one or more said control/sensing devices [Sharpe, request/response, col 11 lines 1-15].

6. As per claim 258, Sharpe discloses the digital data processor is any of a portable computer and a personal digital assistant [Sharpe, a hand-held device or laptop, col 6 lines 30-45].

7. As per claim 259, Sharpe discloses the digital data processor is battery-powered as a design choice.

8. As per claims 260,261 Sharpe discloses the digital data processor operates without a wired network connection to the process control system [Sharpe, field devices and process plant, col 1 lines 20-35].

9. As per claim 262, Sharpe discloses 03) includes exchanging over the wireless network messages that include requests, generated by the process controller, for managing objects within the control system, wherein those objects maintain information on the status of at least selected control/sensing devices [Sharpe, the present state of device, col 7 lines 28-40].

10. As per claim 263, Sharpe discloses 03) includes exchanging over the wireless network one or more messages for remotely managing shared objects of the control system [Sharpe, the control and monitors a device, col 7 lines 28-40].

11. As per claim 264, Sharpe discloses 03) includes exchanging over the wireless network one or mere messages for any of creating, registering, locating, accessing and/or updating said objects that maintain on the status of at least selected control/sensing devices [Sharpe, the present state of device, col 7 lines 28-40].

12. As per claim 265, Sharpe discloses (B) includes exchanging over the wireless network one or more messages for any of (i) creating a named object that stores

information regarding the one or more control/sensing devices, (ii) destroying such an object [Sharpe, change the configured of one or more of the smart devices, col 7 lines 28-40], (iii) accessing information such an object, (iv) updating information in such an object [Sharpe, change the configured of one or more of the smart devices, col 7 lines 28-40], (v) determining, from an object name, a physical address associated with such an object [Sharpe, objects, name and address, col 14 lines 29-35], and (vi) providing notification of changes in at least selected information stored in such an object [Sharpe, notifies the user, col 20 lines 29-42].

13. As per claim 266, Sharpe discloses (B) includes exchanging over the wireless network one or more messages including requests to get a process variable associated with one or more of the control/sensing devices [Sharpe, request/response, col 11 lines 1-15].

14. As per claim 267, Sharpe discloses executing a program on said digital data processor in order to configure it as a said processor controller [Sharpe, a server 66, Fig 2].

15. As per claim 268 Sharpe discloses exchanging said messages over the wireless network using a TCP/IP protocol [Sharpe, TCP/IP, col 15 line 34].

16. As per claim 269, Sharpe discloses exchanging said messages in a form of any of text and ASC format [Sharpe, format, col 7 lines 1-8].

17. As per claim 270, Sharpe discloses exchanging one or more said messages in order to get information reflecting the status of one or more of the devices [Sharpe, the present state of device, col 7 lines 28-40].

18. As per claim 271, Sharpe discloses graphically displaying information gotten by the digital data processor in response said one or more messages information reflecting the status of one or more of the devices [Sharpe, graphical user interface, col 7 line 6].

19. As per claim 272, Sharpe discloses exchanging one or more said messages in order to set a value associated with one or more of the control/sensing devices [Sharpe, based on the updated information, col 20 lines 15-20].

20. As per claim 273, Sharpe discloses the digital data processor is a personal digital assistant [Sharpe, a hand-held or laptop computer, col 6 line 36].

21. As per claim 274, Sharpe discloses providing user input to the digital data processor via any of a keyboard or mouse [Sharpe, user or application input, col 17 lines 56-66].

22. As per claim 275, Sharpe discloses the digital data processor is adapted to monitor and control one or more plant processes [Sharpe, monitor and control, col 7 lines 28-40].

23. As per claim 276, Sharpe discloses the digital data processor is adapted to provide remote access to one or more of said control/sensing devices for purposes of any of monitoring and controlling said one or more plant processes [Sharpe, monitor and control, col 7 lines 28-40].

24. As per claim 178, Sharpe discloses A process control system, comprising:
A. a plurality of devices to any of monitor and control a process [Sharpe, monitored and controlled, col 7 lines 28-40],

B. a portable computer equipped for display to, and input from, an operator [Sharpe, a laptop computer, col 6 lines 36],

C. a program executing on the portable computer that responds to input to transmit to a digital data processor separate from the portable computer a request to update information that controls one or more of the devices [Sharpe, each control of the interface block displays and updates information pertaining to a device, col 17 lines 56-66],

D. software executing on the digital data processor, the software responding to selected requests received from the program to issue a command to update information that controls one or more of the devices [Sharpe, sends a command, col 10 lines 23-56].

25. As per claim 190, Sharpe discloses A process control system of the type having a plurality of devices to any of monitor and control a process [Sharpe, monitor and control, col 7 lines 28-40], the process control system comprising

A. a portable computer equipped for display to, and input from, an operator [Sharpe, a laptop computer, col 6 line 36],

B. a program executing on the portable computer that transmits to a digital data processor requests to update information that controls one or more of the devices, the program responding to operator input to transmit requests to get information reflecting the status of one or more of the devices and/or displaying said information [Sharpe, each control of the interface block displays and updates information pertaining to a device, col 17 lines 56-66],

C, software executing on the digital data processor, the software responding to requests received from the program to selectively (a) issue a command to update information that controls one or more of the devices [Sharpe, sends a command, col 10 lines 23-56] and (b) obtain information pertaining to one or more of the devices [Sharpe, updates information pertaining to a device, col 17 lines 56-66],

D. wherein the digital data processor is disposed remotely from the portable computer and is coupled for communication therewith via a wireless network [Sharpe, field devices and process plant, col 1 lines 20-35].

26. As per claim 199, Sharpe discloses A process control system comprising

A. a plurality of devices to any of monitor and control a process [Sharpe, monitor and control, col 7 lines 28-40],

B. a portable computer equipped for display to, and input from, an operator [Sharpe, a laptop computer, col 6 line 36],

C. a digital data processor coupled to the portable computer via a wireless network [Sharpe, a server 66, Fig 2],

D. software executing on the digital data processor, the software responding to selected requests received from the portable to execute a service for at least one of (i) creating a named object that stores information regarding the one or more control/sensing devices, (ii) destroying such an object [Sharpe, change the configured of one or more of the smart devices, col 7 lines 28-40], (iii) accessing information in such an object, (iv) updating information in such an object [Sharpe, change the

configured of one or more of the smart devices, col 7 lines 28-40], (v) determining, from an object name, a physical address associated with such an object [Sharpe, objects, name and address, col 14 lines 29-35], and (vi) providing notification of changes in at least selected information stored in such an object [Sharpe, notifies the user, col 20 lines 29-42], and

E. the portable computer transmitting to the digital data processor requests for one or more said services, and responding to input to transit to the digital data processor requests for one or more of said services in order to update information in an object that is associated with one or more of the devices [Sharpe, update information, col 17 lines 56-66].

27. As per claim 213, Sharpe discloses A process control system comprising

A. a plurality of devices to any monitor and control a process [Sharpe, monitor and control, col 7 lines 28-40],

B. a portable computer equipped for display to, and input from, an operator [Sharpe, a laptop computer, col 6 line 36],

C. a digital data processor coupled to the portable computer via a wireless network [Sharpe, a server 66, Fig 2],

D. software executing on the digital data processor, the software responding to selected requests received from the portable to execute a service for at least one of (i) creating a named object that stores information regarding the one or more control/sensing devices, (ii) destroying such an object [Sharpe, change the configured

of one or more of the smart devices, col 7 lines 28-40], (iii) accessing information in such an object, (iv) updating information in such an object [Sharpe, update information, col 17 lines 56-66], (v) determining, from an object name, a physical address associated with such an object [Sharpe, objects, name and address, col 14 lines 29-35], and (vi) providing notification of changes in at least selected information stored in such an object [Sharpe, notifies the user, col 20 lines 29-42].

28. As per claim 229, Sharpe discloses A portable computer for use in a control system that includes one or more control/sensing devices to monitor and/or control a process, the portable computer comprising

A. a program that executes on the portable computer in order to configure it as a process controlling for purposes of at least controlling the one or more control/sensing devices [Sharpe, monitor and control, col 7 lines 28-40],

B. the portable computer, when configured as a process controller, exchanging messages over a wireless network with a server digital data processor for purposes of controlling the one or more control/sensing devices [Sharpe, a laptop computer, col 6 line 36; a server 66, Fig 2],

C. the messages including requests, transmitted by the portable computer to the server digital data processor, for services provided by the server digital data processor including service for at least one of (i) accessing information regarding the one or more control/sensing devices, (ii) updating information regarding the one or more control/sensing devices [Sharpe, update information, col 17 lines 56-66], (iii)

determining a physical address associated with the one or more control/sensing devices [Sharpe, objects, name and address, col 14 lines 29-35], and (iv) providing notification of changes in at least selected information pertaining to the one or more control/sensing devices [Sharpe, notifies the user, col 20 lines 29-42].

29. As per claim 243, Sharpe discloses A digital data processor for use in a control system that includes one or more control/sensing devices to recruiter and/or control a process, the digital data processor comprising

A. a program that executes on the digital data processor in order to configure it as a process controller for purposes of at least controlling the one or more control/sensing devices [Sharpe, monitor and control, col 7 lines 28-40],

B. the digital data processor, when configured as a process controller, exchanging messages over a wireless network for purposes of controlling the one or more control/sensing devices [Sharpe, a server 66, Fig 2],

C. the messages including requests, transmitted by the digital data processor for object management services including services for at least one of (i) accessing information regarding the one or more control/sensing devices, (ii) updating information regarding the one or more control/sensing devices [Sharpe, update information, col 17 lines 56-66], (iii) determining a physical address associated with the one or more control/sensing devices [Sharpe, objects, name and address, col 14 lines 29-35], and (iv) providing notification of changes in at least selected information pertaining to the

one or more control/sensing devices [Sharpe, notifies the user, col 20 lines 29-42].

30. Claims 179-189, 191-198, 200-211, 214-228, 230-242, 244-256 contain the identical limitations set forth in claims 258-276. Therefore claims 179-189, 191-198, 200-211, 214-228, 230-242, 244-256 are rejected for the same rationale set forth in claims 258-276.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong H. Vu whose telephone number is 571-272-3904. The examiner can normally be reached on 6:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on 571-272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thong Vu
Primary Examiner

THONG VU
PRIMARY PATENT EXAMINER

